



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12589251

Date: FEB. 16, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a software engineer under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary met the minimum requirements for the offered position because his degree was conferred after the priority date.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the decision of the Director. The matter is remanded for the entry of a new decision consistent with the analysis below.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). See section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. See section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petition is accompanied by a labor certification with a priority date of September 26, 2019.¹ Part H of the labor certification states that the primary education requirements for the offered position are a master's degree (or foreign equivalent) in computer science, engineering, computer information systems, mathematics, physics, or a related field.

Part J of the labor certification states that the Beneficiary possesses a master of computer science completed in 2019. In support of the Beneficiary's qualifications, the Petitioner submitted an enrollment verification certificate issued by the office of the registrar dated September 9, 2019, and a copy of the Beneficiary's academic transcript. The enrollment verification certificate states that the Beneficiary "has completed all academic requirements for the master of science in computer science degree program in very good standing ... as of May 25, 2019, and is expected to graduate December 2019."

The Director issued a request for evidence (RFE), noting that the record did not establish that the Beneficiary qualified for the requested classification. The Director stated that the enrollment certificate was insufficient to establish that the Beneficiary met the minimum education requirements for the offered position because the Beneficiary did not receive the required master's degree prior to the priority date.

In response to the RFE the Petitioner submitted a copy of the master of science in computer science degree issued to the Beneficiary on December 21, 2019. The Petitioner stated that the Beneficiary met the education requirements as of the priority date because, as noted in the enrollment verification certificate, he completed all academic requirements as of May 25, 2019.

The Director denied the petition, finding that the Beneficiary's degree was not approved by the university and conferred until December 21, 2019, which was after the September 26, 2019 priority date. Stating that "there is a difference between completing the academic requirements for a degree and actually having a degree conferred," the Director concluded that the Beneficiary was not qualified for the offered position.

On appeal the Petitioner again states that the Beneficiary met the minimum education requirement for the offered position as of September 26, 2019 because he completed the academic requirements for the master of science degree on May 25, 2019. The Petitioner cites to *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017), and asserts that the Director erred in relying only on the degree conferral date without conducting a case-specific analysis of whether the Beneficiary completed all substantive requirements to earn the degree and that the degree was approved by the university.

¹ The priority date of a petition is the date the DOL accepted the labor certification for processing. *See* section 8 C.F.R. § 204.5(d).

The statute and regulations governing the advanced degree professional classification use the terms “degree” and “official academic record.” 8 C.F.R. § 204.5(k)(3)(i)(B). An “official academic record” is not limited to a diploma. Accordingly, we must conduct a case-specific analysis to determine whether a beneficiary completed all substantive requirements to earn the degree and whether the university approved the degree as demonstrated by an official academic record. *Matter of O-A-, Inc.*, Adopted Decision 2017-03 at 4.

When determining whether a document is an official academic record that substantiates a claimed degree, we may consider whether the document was issued by a university in the normal course of its business; whether the document was issued contemporaneous with events; and whether the document indicates that all degree requirements, not just the required coursework, have been completed. *Id.* The Petitioner bears the burden to establish that all of the substantive requirements for the degree were met and that the degree was in fact approved by the responsible university body.

In this case, the Director’s decision does not include an analysis of the Beneficiary’s educational documents to determine whether these may be considered an official academic record establishing the Beneficiary’s completion of the master’s degree. While the enrollment verification certificate states that the Beneficiary completed “all academic requirements” for the degree and is “expected to graduate,” the record does not include evidence to identify the academic requirements for the master of science degree. Nor does the record verify whether any non-academic requirements applied to the Beneficiary which may have altered the expectation that the degree would be awarded, and that the degree was actually completed on the date that the Petitioner asserts.² Further, if any additional requirements did apply, the record does not demonstrate whether those requirements were met before the priority date.

Considering this deficiency, we will remand this matter for further consideration by the Director. We note that the Electronic Database for Global Education (EDGE),³ created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),⁴ includes the following notes regarding use of official transcripts in lieu of official diplomas in the United States, which the Director may wish to consider:

In the United States, it is common for graduates attending commencement ceremonies to receive a rolled-up blank sheet of paper wrapped in a ribbon. The official diploma is mailed months later. But, in the interim, students can obtain an official transcript with a “degree statement” or “statement of degree” certifying that they have indeed completed all requirements for the degree, the name of the degree and the date upon which it was approved by the academic senate.

² We note that the Beneficiary’s university’s website states that students must apply to graduate and includes a list of steps, in addition to completing degree requirements, that are required to “officially graduate.” See [https://\[redacted\].edu/graduation-requirements](https://[redacted].edu/graduation-requirements) (accessed January 19, 2021).

³ AACRAO is described on its website as “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries.” <http://www.aacrao.org/who-we-are> (last visited January 21, 2021).

⁴ EDGE is described on its registration page as “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php> (last visited January 21, 2021).

On remand, the Director may wish to issue a RFE outlining the deficiencies above, including, if deemed appropriate, inquiry into whether all requirements for graduation were satisfied, and the date such approval was obtained from the school in question, and allowing the Petitioner an opportunity to respond.

III. CONCLUSION

For the reasons discussed above, we will withdraw the Director's decision and remand the case for further consideration. The Director may issue a new RFE and, following the Petitioner's response thereto or the expiration of the time period for response, issue a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.